

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3
4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,)
7) Criminal Action
8 v.) No. 1:15-10338-FDS-4
9 NOE SALVADOR PEREZ-VASQUEZ,)
10)
11 Defendant.)
12)

13 BEFORE THE HONORABLE M. PAGE KELLEY
14 UNITED STATES MAGISTRATE JUDGE

15 STATUS CONFERENCE

16 November 9, 2017

17 John J. Moakley United States Courthouse
18 Courtroom No. 24
19 One Courthouse Way
20 Boston, Massachusetts 02210

21
22 Linda Walsh, RPR, CRR
23 Official Court Reporter
24 John J. Moakley United States Courthouse
25 One Courthouse Way, Room 5205
Boston, Massachusetts 02210
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1 APPEARANCES:

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UNITED STATES ATTORNEY'S OFFICE

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6 On Behalf of the Defendant German Hernandez-Escobar:

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21 On Behalf of the Defendant Carlos Melara:

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On Behalf of the Defendant Joel Martinez:

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24 (Appearances continued on next page.)

25

1 APPEARANCES (Continued):

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(Appearances continued on next page.)

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5 ALSO PRESENT: Gabriel Hadad, Interpreter

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8 Proceedings recorded by sound recording and
9 produced by computer-aided stenography
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P R O C E E D I N G S

THE CLERK: Today is Thursday, November 9th, 2017, and we are on the record in Criminal Case Number 15-10338, the United States of America versus Oscar Recines-Garcia, et al., the Honorable M. Page Kelley presiding.

Would counsel for the Government please identify themselves for the record.

MR. POHL: Good afternoon, Your Honor. Christopher Pohl and Kelly Lawrence for the United States.

THE COURT: Good afternoon. So I think defense counsel should have signed in, both those who are on the phone and those who are present, and if you have not, you need to do that immediately after the hearing. And I'm just going to accept Ms. Moore's taking of attendance as accurate.

I would ask the defense counsel whose clients are present in the courtroom to identify themselves and their clients.

MS. GRIFFIN: Good afternoon, Judge. Joan Griffin representing German Hernandez-Escobar, who is at the far right.

THE COURT: Okay. Good afternoon.

MR. O'HARA: Good afternoon, Your Honor. Raymond A. O'Hara on behalf of Noe Perez-Vasquez, who is seated --

THE COURT: Okay. Good afternoon.

MR. LOPEZ: Scott Lopez representing Edwin Guzman, who is standing.

1 THE COURT: Good afternoon, sir.

2 MS. SCHULMAN: I'm Emily Schulman for Rigoberto Mejia.

3 THE COURT: Okay. And just in case that wasn't picked
4 up, it's Emily Schulman representing Rigoberto Mejia, who is
5 second there. Thank you. Okay.

6 So I think we need to swear in the interpreter.

7 (Interpreter was sworn.)

8 THE CLERK: Can you please state your name for the
9 record.

10 THE INTERPRETER: Gabriel Hadad.

11 THE COURT: Okay. So I'll note that the trial for the
12 one Group 4 Defendant who was left going to trial began
13 yesterday, according to the docket, and also that the Group 3
14 Defendants are going to be sent up today to the District Court.

15 Your first status conference before Judge Saylor is
16 December 11th, and he has set out a whole order with deadlines
17 in it. Typically in this session we would have set dates for
18 expert disclosures, dispositive motions, et cetera, and I think
19 we have not done that -- well, I know we have not done that,
20 and so Judge Saylor is doing that. So counsel in Group 3
21 should familiarize themselves with that record.

22 And I think I'll just ask for the record now, is there
23 anyone in Group 3 who does not assent to exclude the time under
24 the Speedy Trial Act from today to December 11th, the first day
25 before the District Court?

1 MR. LOPEZ: Your Honor, once again, Mr. Guzman will
2 not assent to it.

3 THE COURT: Okay. Okay. I'll note that. Thank you.
4 All right.

5 So let me ask the Government to give us a status on
6 the discovery.

7 MR. POHL: Thank you, Your Honor.

8 So the last global discovery production was produced
9 on or about October 16th. I think after that date much of our
10 focus on discovery was directed toward the Group 4 Defendants
11 that were still sort of, at least in a posture of going to
12 trial, even though, as the case got closer to trial, many of
13 those cases ended up resolving by way of guilty pleas.

14 So I think our next production will end up being a
15 chance for us to produce globally some of the information that
16 we provided to the Group 4 Defendants sort of more recently,
17 and I expect that to be going out in the next 30 days.

18 So I think -- you know, in all candor, I don't
19 know -- a lot of that information I think is going to relate to
20 most of the people that were in that group, but to the extent
21 it is relevant for the Defendants in the future trials, we want
22 to make sure they have the information -- that everyone has the
23 same information as the Defendants that were either about to go
24 to trial or that are currently going to trial.

25 THE COURT: Okay. Thank you very much.

1 So any matters that defense counsel wish to be heard
2 on?

3 Yes, Ms. Schulman? Can you come forward so the
4 microphones will record what you say.

5 MS. SCHULMAN: Yes, Your Honor.

6 THE COURT: Thank you.

7 MS. SCHULMAN: So I think this Court knows I filed a
8 status update and motion with this Court on September 27th
9 detailing a state of total disarray of the discovery at the
10 Wyatt Detention Facility, and seeking an order from this Court
11 to have either a third party or the Government rectify that,
12 because it seems evident that Wyatt, at least to this point,
13 has been unable to do it, and I don't see any reason to have
14 any measure of confidence that Wyatt will be able to carry out
15 its duties effectively in that regard.

16 In discussing this issue with the Government just
17 before this status conference, the Government has agreed to
18 take responsibility for the state of discovery on the kind of
19 computers at Wyatt, and I think the plan is for the Government
20 to retrieve all of the computers that have been placed at that
21 facility, wipe them clean of the kind of erratic discovery that
22 Wyatt has and hasn't loaded onto them, and load on all of the
23 discovery that the Government has produced in the case to date;
24 and in that way we should all know that the proper discovery is
25 in fact on the computers at Wyatt.

1 So I think that is the anticipated solution to what
2 has been a very prolonged and problematic, rather chronic issue
3 with discovery in this case. The only thing that we haven't
4 sort of ascertained -- as I say, this was just kind of
5 discussed and agreed upon moments before the status conference
6 began, and so we don't have a date certain by which that will
7 happen.

8 I want to give -- you know, commend the Government for
9 taking responsibility for this and being willing to kind of do
10 this in an expeditious manner, but I think it's important that
11 we do have a date certain by which we, and frankly the
12 Defendants, will know that they will in fact finally have
13 access to the discovery to which they have been entitled for
14 the past year and a half in this case.

15 THE COURT: Okay. Thank you very much.

16 Yes, Mr. Pohl?

17 MR. POHL: I don't -- I guess I would just say a
18 couple of things.

19 One -- and, frankly, the only reason that I'm agreeing
20 to do this is that it's too hard to determine remotely for us
21 what exactly the nature of the problems are and the extent of
22 their severity. And, you know, I've gotten -- I saw
23 Ms. Schulman's filing. I take her representation seriously. I
24 really haven't gotten much in the way of an update from, you
25 know, Wyatt or from any other interested party involved in the

1 discovery process about exactly how the computers might be
2 different, you know, how Computer A and B is different than
3 Computer C down there. So, frankly, I'm -- I think it is
4 easier to just go get the laptops and have them examined here
5 and make sure that everything that we've produced is on all of
6 them so that everyone is on the same page. I don't have any
7 difficulty doing that.

8 How long that's going to take? I'm sure that we'll be
9 able to go down and get the laptops next week, and I'll be able
10 to report to Ms. Schulman sort of how long that process will
11 take. I don't have any reason to think it's going to take
12 forever and that we can't do it expeditiously. But, you know,
13 this seems like -- I mean, I agree it seems like this issue has
14 been kind of lingering for a while, but the fact that it's been
15 lingering for a while doesn't mean that I necessarily agree
16 that the computers are in quite as bad a shape as have been
17 sort of described, but I'm ready to just move this through.
18 We're at a point in the case now where I really don't want any
19 more conversations like this going on about whether or not
20 there is some gap in one of the laptops at one of these
21 facilities to be used as a reason for potentially delaying a
22 trial in the future.

23 I think it's fair to say that all of the Defendants in
24 this case have had extensive access to extensive amounts of
25 discovery for a very long time, but if there's an issue with

1 one of the laptops or some of the laptops having differences in
2 the material that's been produced to Wyatt, I'd just as soon
3 take them back, load them here, get them there to have this
4 issue put to bed once and for all. Because I think, starting
5 very soon -- the calendar is already moving quickly for us. We
6 think it's going to start moving quickly for all the remaining
7 defense counsel in the remaining groups, and so now is a good
8 time to make sure that that issue is put to bed. So we're
9 happy to do that.

10 THE COURT: Well, I will just say, my reading of the
11 rules is that the Government is obligated to deliver materials
12 to the institutions, but what happens to the materials once
13 they get there I don't think is totally the Government's -- or
14 clearly the Government's responsibility. However -- and that's
15 really a problem that needs to be addressed with the rules.

16 MS. GRIFFIN: Judge, can I say from another
17 institution what happens, my understanding is, that the
18 computer goes back to the Government. They load on the new
19 discovery and they send it out. So it is all being done by the
20 Government as far as I know.

21 THE COURT: Right, but the Government did not purchase
22 these computers. The institutions themselves don't have the
23 means, and it isn't the Government's job to provide the actual
24 computers, so we've really tried to do that as best we can in a
25 kind of makeshift way here, and I don't -- I mean, I was a

1 criminal defense lawyer for 27 years, as everyone knows, and I
2 spent many hours at institutions playing discovery for my
3 clients myself on my laptop because, especially at Walpole,
4 they just never had a computer that would play the stuff that
5 the Government sent them. So I think we're trying hard to make
6 sure that every Defendant has access to the discovery here.

7 And I really appreciate Ms. Schulman's being so
8 tenacious about this and pointing it out. I thought after your
9 motion, Ms. Schulman, that we were on it, and it was being
10 taken care of, so sorry to hear that that's not the case.

11 MS. SCHULMAN: I have received absolutely no feedback
12 from anyone or response to my motion since it was filed
13 September 27th, which in itself I found very dismaying. The
14 Government was aware of it. The Court was aware of it. The
15 administrative office was aware of it. Wyatt was aware of it.

16 THE COURT: We were definitely aware of it.

17 MS. SCHULMAN: All I can say is that I have received
18 absolutely no response whatsoever to my motion. But I am
19 pleased that the Government -- I mean, it's the Government's
20 obligation to provide discovery, frankly, in my view, to the
21 Defendants, and the Government has agreed to make sure that in
22 fact the discovery that is on the Wyatt computers is complete
23 and accurate and comprehensive.

24 I will take slight issue with Mr. Pohl's
25 characterization of some things, not that I want to get into a

1 debate about this. I appreciate that he takes my
2 representations and my motion at face value. These are not
3 minor, you know, kind of oversights of, oh, a document here, a
4 document there. There are wholesale productions, several, in
5 fact the majority of the Government's productions are not
6 included on any given Wyatt computer. And just to be clear,
7 the initial computer that was reviewed was the one that Wyatt
8 itself had selected for us to use when meeting with our client.
9 So it was Wyatt -- it wasn't even a random selection. It was
10 Wyatt's own choice of which computer we were going to use. And
11 more than half of the Government's productions, not individual
12 documents, productions were missing from that computer.

13 And in good faith we assumed that perhaps there was
14 just some problem with that individual computer and so asked
15 for a different computer so that we could simply review with
16 our client the documents that the Government had produced. And
17 when Wyatt gave us a second computer, once again, virtually
18 half of the Government's productions were not on the computer,
19 but even more concerning was that the productions that were
20 missing weren't the same ones between the two computers. So it
21 is a completely haphazard, unpredictable, erratic, just
22 complete state of disarray.

23 And so, just to be clear, my understanding is that the
24 Government isn't going to simply, you know, go through and see
25 what is on these computers. My strong request that I hope

1 we're agreed to today is that the Government is going to wipe
2 the computers and itself -- I mean, this is not a difficult or
3 lengthy process -- simply load on, whether it's a thumb drive
4 or a hard drive, right, a load file of each production onto
5 each computer so that the Government knows that then
6 Productions 1 through 13 have all been loaded onto the ten
7 computers.

8 So when Mr. Pohl says, oh, I don't think it will take
9 forever, not only should it not take forever, but once the
10 computers are up here, anyone who is focused on this task, in
11 my experience, should be able to complete this within a week.
12 This is not a lengthy, time-consuming, complicated process.

13 THE COURT: Okay. So I think what we'll do now is
14 just ask you, Mr. Pohl, to do that. And what about the next
15 production in the next 30 days?

16 MR. POHL: I think that's a reasonable schedule. I
17 don't have any --

18 THE COURT: Sure. But I'm just saying how is that
19 going to make it onto the computers? Is there any way that can
20 go on as you're redoing this?

21 MR. POHL: Sure. I'll investigate that. I mean, I
22 think it's -- I don't think that's an impossible request
23 because, as I said, we produced it to a smaller subset of the
24 defense attorneys anyway. So maybe as we get it back, we might
25 be able to accelerate that process and get them onto the

1 laptops now.

2 THE COURT: Okay. That would be great because I do
3 think in the future additions to the computers should be
4 thought out carefully so that we don't end up with a bunch of
5 missing stuff in the future. I mean, it's great that you're
6 going to bring them in, wipe them, and load them up, but then I
7 think as you provide more discovery, some thought should be
8 given to how that is going to make its way onto the computers
9 which will then be returned to Wyatt. Okay?

10 MS. SCHULMAN: Your Honor, we have one more request,
11 and I don't know the details of this. If it's possible to load
12 the new discovery onto the computers in a manner that's
13 unencrypted so that the Defendants can readily access it?
14 Again, I defer to the Government on whether that's feasible or
15 not, but if it's possible to do that, we would request that
16 that happen just to kind of facilitate the Defendants' access
17 to those materials.

18 MS. GRIFFIN: When we were having trouble at Norfolk,
19 they agreed to put on unencrypted because there was simply no
20 way that they could actually run the program down there to
21 unencrypt it.

22 THE COURT: Can you do that, Mr. Pohl?

23 MR. POHL: I'll look into that, Your Honor. I have
24 got Mr. Tumposky, you know, e-mailed this week that he has his
25 client at Cedar Junction who sounds like he had a similar issue

1 with the encryption.

2 THE COURT: Big issues there.

3 MR. POHL: Mr. Tumposky's e-mail had focused me on
4 this issue. If there's an issue, we'll come back to the Court,
5 but we'll do it in a way that everybody can access it.

6 THE COURT: Yes?

7 MR. TUMPOSKY: My client is at Walpole. There are no
8 laptops there. He's using whatever computer the facility has,
9 which I can only imagine and I believe are not up to speed. He
10 cannot open the last couple of CDs. The password simply won't
11 allow him to view. He can't view the material that's on there.

12 THE COURT: Okay. So we're having a problem in an
13 unrelated case with someone at Walpole not being able to see
14 their discovery and -- a case of Mike Crowley's. So I think
15 Kevin Neal is working with -- Mr. Andrews is nodding at this.

16 MR. TUMPOSKY: I did talk to Mr. Andrews about this.

17 THE COURT: Okay. I think you should e-mail Kevin
18 Neal. Could I just ask the people on the phone to please mute
19 your phones because we're getting some weird noises. Thank
20 you.

21 So perhaps you could let Kellyann Moore know within
22 two weeks if that problem has not been resolved, and we'll get
23 back to it.

24 MR. TUMPOSKY: I will. Thank you.

25 THE COURT: Okay. So anything else from anyone else?

1 MS. GRIFFIN: Judge, Joan Griffin for
2 Mr. Hernandez-Escobar. The current trial that's ongoing, is it
3 possible for the rest of the Defendants to have transcripts of
4 that trial?

5 THE COURT: Well, I don't know. I think -- are they
6 having daily transcripts?

7 MS. GRIFFIN: I've been reading the motions back and
8 forth. It looks like they're having at least some, and I
9 believe the Court has ruled that to the extent the Government
10 is requesting daily transcripts, they should be provided to the
11 Defendant. So if we could get those as well, that would be
12 helpful. I mean, eventually we're going to need these things,
13 I think.

14 THE COURT: Sure. Mr. Andrews, how does that work; do
15 you know?

16 MR. ANDREWS: I think if the transcripts are being
17 produced, the panel of attorneys can get them at ten cents a
18 pop, in essence ten cents a page. So I believe you should
19 probably just contact Valerie, who is the court reporter on the
20 matter. She'll tell you what she needs.

21 THE COURT: I would assume if there aren't dailies
22 being produced, someone could move for that with CJA funds,
23 right?

24 MR. POHL: It is my understanding there are dailies
25 being produced, and that the Government and the defense are

1 splitting the cost of the dailies.

2 THE COURT: I see. So contact -- Mr. Andrews, that's
3 covered for everyone?

4 MR. ANDREWS: I'm sorry, Your Honor?

5 THE COURT: If people who are not on trial want those
6 dailies, the cost is covered for the CJA?

7 MR. ANDREWS: I think they just have to make a request
8 through the court reporter, and Valerie's last name is escaping
9 me right now. But they'll just fill out a 24 and make a
10 request.

11 MS. GRIFFIN: So apparently, according to Mr. Pohl,
12 the Government and the defense are splitting the cost of
13 dailies at the trial. So do we each all have to pay for
14 another copy?

15 MR. POHL: I'm pretty sure the answer to that question
16 is yes.

17 MR. ANDREWS: Yes, but it's at a greatly reduced rate.

18 MS. GRIFFIN: Okay. Do we need to make a motion for
19 that?

20 MR. ANDREWS: I keep telling you, contact Valerie. Go
21 through the court reporter. She'll ask you to fill out a 24.
22 If she wants a motion with it, she'll tell you she needs a
23 motion with it. Okay?

24 MS. GRIFFIN: All right. Thank you.

25 Another question. The Government has -- there's an

1 exhibit list in the ongoing trial -- and, Justin, I presume
2 this is what's coming on our next discovery. There's been a
3 new indictment against Sugar, one of the MS-13 people, but he's
4 not in our indictment, and it quotes extensively from a
5 December 2015 joint meeting. The transcript of that meeting
6 became Exhibit Number 1 or 2 in the ongoing trial. It hasn't
7 yet been produced to anybody in our case, and it's obviously a
8 very important transcript. Now, I e-mailed the Government, and
9 they kindly sent me a copy of it so I've got it here. I
10 presume it will now be included in discovery to us, and
11 therefore, to our Defendants. So that's kind of one thing I do
12 want to make sure of.

13 And then at the same time I asked the Government,
14 because now this exhibit list was looking so interesting, if I
15 could have the exhibit list with Bates numbers attached so that
16 I could actually find in our voluminous discovery what exhibits
17 they are using in this current trial, and they told me they
18 didn't have that available. Now, in other trials I've been in
19 they have Bates-referenced their exhibits.

20 So if the Government -- if they have it perhaps by now
21 or if they could be asked to produce that, that would make it
22 easier for the rest of us to actually look at the exhibits
23 they're producing in the trial and see which ones are going to
24 be generally applicable to the other trials; which things, for
25 example, such as this transcript will be, because, I mean, it

1 just describes the organization in general, and it's obviously
2 their Exhibit A. So I would like an exhibit list with Bates
3 numbers.

4 THE COURT: Sure. Mr. Pohl?

5 MR. POHL: Yes, we're going to produce the transcript
6 globally. No, we're not going to Bates-number the exhibit
7 list. I mean, I'm -- if there's anything in particular that
8 defense counsel can't find and want to e-mail us about that is
9 of particular interest to them and their clients, we're happy
10 to try to do our best to point them in the right direction
11 but --

12 THE COURT: So one of the issues going forward here is
13 just to keep the cost down as far as numerous defense counsels
14 scouring a record to try to figure something out. So, for
15 example, is there a binder of the exhibits that is available to
16 the other lawyers who are not in the trial?

17 MR. POHL: So we did do an exhibit binder for the
18 Court and for defense counsel for the defendant that went to
19 trial. It hadn't actually occurred to me that that might be
20 something that we could put in the global discovery production.
21 I'll look at it to make sure there isn't something that I am
22 missing.

23 I guess my initial reaction is that's exactly the kind
24 of material that was going to be in the production anyway, so,
25 I mean, we'll -- if there's some reason to withhold some parts

1 of it for security reasons, we will, but I would expect that
2 we'd be able to produce that.

3 THE COURT: I think, also, if it's bundled in such a
4 way that people know that you've moved it into evidence in the
5 first trial, then at least that demonstrates its importance --

6 MR. POHL: Sure.

7 THE COURT: -- and could help them prepare for trial.
8 I mean, I just think it's -- anything to make preparation more
9 efficient so that -- I think we still have about 40 lawyers who
10 are by now kind of scrambling around. So anything -- we could
11 save tens and tens of hours of billable time if that could
12 be -- so perhaps if you could just try to produce your exhibits
13 in some way, that would be great. Okay. So let's see what
14 that production looks like, Ms. Griffin, and any follow-up I'm
15 happy to hear you on.

16 Anything else?

17 (No response.)

18 THE COURT: Okay. So I would like to set the next
19 date for -- oh, yes, sir?

20 DEFENSE COUNSEL: I don't know, Judge, that this is
21 something that we need to take up with Your Honor, but
22 Mr. Tum -- I'm actually a little surprised that he didn't jump
23 up on his feet, but I don't want to end today without talking
24 about it. So Mr. Tumposky filed a motion this afternoon to
25 continue the March trial and --

1 THE COURT: Congratulations.

2 DEFENSE COUNSEL: Yes.

3 MR. TUMPOSKY: Thank you. I didn't bring it up
4 because I actually assumed Judge Saylor wanted to --

5 DEFENSE COUNSEL: That, I think -- I think that's
6 something that would need to be addressed sooner rather than
7 later, but, you know, we'll be -- I'll be before him with the
8 Group 3 Defendants in the next few weeks, but maybe we'll --
9 we'll just contact his session to address the Group 2 motion.

10 THE COURT: Okay. So I think you should -- it's
11 definitely for the judge to take up -- for Judge Saylor to take
12 up, so you might -- if you're not hearing something soon
13 enough, you might just e-mail Lisa Pezzarossi and ask her to be
14 heard -- you know, can you be heard on that.

15 MR. TUMPOSKY: Yes. Okay. I will do that.

16 DEFENSE COUNSEL: Thank you.

17 THE COURT: Okay. So the next date for everyone who
18 hasn't been sent up to the District Court I'd like to schedule
19 for January 18th, which is a Thursday, at 2 o'clock. And is
20 there anyone in the groups that are staying here who does not
21 assent to excluding the time between today and January 18th?

22 (No response.)

23 THE COURT: And is there anything else I can do?

24 (No response.)

25 THE COURT: Okay. I would -- Ms. Schulman, if matters

1 have not been settled out in -- at Wyatt, I would say, within
2 21 days, if you can just let the Court know, and we'll take
3 some action on it.

4 MS. SCHULMAN: I will, Your Honor. Thank you.

5 THE COURT: Thank you very much. Okay.

6 Anything else?

7 (No response.)

8 THE COURT: Thank you very much.

9 (Recording ends at 2:37:39)

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1 CERTIFICATE OF OFFICIAL REPORTER
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3 I, Linda Walsh, Registered Professional Reporter
4 and Certified Realtime Reporter, in and for the United States
5 District Court for the District of Massachusetts, do hereby
6 certify that pursuant to Section 753, Title 28, United States
7 Code that the foregoing is a true and correct transcript of the
8 stenographically reported proceedings held in the
9 above-entitled matter and that the transcript page format is in
10 conformance with the regulations of the Judicial Conference of
11 the United States.

12 Dated this 11th day of December, 2018.
13

14
15 /s/ Linda Walsh

16 Linda Walsh, RPR, CRR

17 Official Court Reporter
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